

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO COMPEL NAMED
PLAINTIFFS' A-FILE INFORMATION**

**NOTE ON MOTION CALENDAR:
January 24, 2020**

I. INTRODUCTION

Defendants continue to wrongly withhold significant information and analysis, created by Defendant U.S. Citizenship and Immigration Services (USCIS), about the Named Plaintiffs in their A-Files. Such information is important to Plaintiffs' claims challenging CARRP and related extreme vetting programs. This Court ruled that information related to internal vetting procedures used by USCIS is "highly relevant" to Plaintiffs' claims, and that there is "little justification for withholding this information based on the law enforcement privilege." Dkt. 274 at 5. This Court has also instructed Defendants to use the law enforcement privilege "deliberately" and "to be exacting with which documents fall within this privilege." Dkt. 148 at 5. Nonetheless, Plaintiffs' A-files still contain numerous redactions, including block redactions

1 covering entire pages of documents. These widespread redactions reveal that Defendants have
 2 failed to use the privilege “deliberately” and have withheld USCIS-generated information to
 3 which Plaintiffs are entitled.

4 II. ARGUMENT

5 This Court has upheld Defendants’ law enforcement privilege redactions *only* with regard
 6 to two categories of information: (1) “why” information that originates from law enforcement
 7 agencies external to USCIS, and (2) communications between USCIS and third-party law
 8 enforcement agencies relating to such “why” information. Dkt. 274 at 3-5. Beyond these two
 9 categories, the Court has ruled that Plaintiffs are entitled to USCIS-generated information,
 10 information regarding USCIS internal vetting procedures, and USCIS’s internal decision-making
 11 processes for adjudicating A-files. Dkt. 274 at 5 (finding “little justification” for withholding
 12 information related to USCIS’s internal vetting procedures). Such information is highly relevant
 13 to Plaintiffs’ claims. *See* Dkt. 274 at 5.

14 In their Opposition brief, Defendants assert that they withhold only information
 15 originating from third-party law enforcement agencies or communications with those agencies.
 16 *See* Dkt. 326. That is incorrect. Defendants wrongfully redact internal USCIS analysis and
 17 USCIS-generated information throughout the Named Plaintiffs’ A-files. *See, e.g.,* Hyatt Decl.,
 18 Ex. A at DEF-00420720 (the Hyatt Declaration includes a further discussion of the contents of
 19 this document). For example, in at least one Named Plaintiff’s A-file, Defendants redact
 20 information about an *internal* USCIS vetting program. Even though the program was
 21 USCIS-run—and information gathered from the program was generated by USCIS—Defendants
 22 redact the name of the program, information generated by the program, and related internal
 23 analysis in this applicant’s A-file. *See id.* at DEF-00420593, DEF-00420705, DEF-00420707. In
 24 an internal communication from one USCIS officer to another in the A-file, Defendants redact
 25 information discovered through this internal vetting program even though the same
 26 communication acknowledges that the vetting program was initiated by USCIS. *See id.* at

1 DEF-00420593. On its face, this document shows that Defendants have withheld information
2 related to USCIS internal vetting procedures to which this Court has ruled Plaintiffs are entitled.
3 *See* Dkt. 274 at 5 (“The Court believes the “internal” vetting procedures used by USCIS to be
4 most relevant . . . [and] sees little justification for withholding this information based on the law
5 enforcement privilege.”).

6 Defendants also withhold other USCIS-generated analysis and information that is highly
7 relevant to Plaintiffs’ claims. For example, Defendants redact analyses performed by USCIS
8 based on the information generated through the internal vetting program discussed above. *See*
9 Hyatt Decl., Ex. A at DEF-00420711 (redacting almost all analysis related to this internal vetting
10 program); *see also id.* at DEF-00420717. In other documents in this same A-file, Defendants
11 withhold an entire internal email between USCIS officers, *id.* at DEF-00420592, and block-
12 redact large portions of an internal USCIS memorandum regarding the applicant. *Id.* at DEF-
13 00420704. This internal analysis and information is highly relevant to Plaintiffs’ claims and, per
14 this Court’s Order, cannot be withheld under the law enforcement privilege. *See* Dkt. 274 at 5.

15 Moreover, Defendants claim that, for immigration benefit applications where at least
16 some information underlying the national security concern originates from a third-party law
17 enforcement agency, “the third-party agency information *and the reasons why USCIS determined*
18 *that CARRP review was necessary* are inextricably linked, and therefore, *both* must be protected
19 from disclosure.” Defendants’ Response, Dkt. 326 at 4 (emphasis added). This cannot be true.
20 Although the Court permitted Defendants to withhold information originating from third-party
21 law enforcement agencies, additionally withholding subsequent USCIS internal analyses,
22 interpretations, and communications regarding whether CARRP review is necessary in these
23 cases goes beyond the scope of permissible law enforcement privilege redactions. Plaintiffs are
24 entitled to information regarding USCIS’s internal decision-making processes, methods of
25 distilling and analyzing facts, and adjudication of these immigration benefit applications. *See*
26 Dkt. 274 at 5 (finding little justification for withholding “‘internal’ vetting procedures used by

1 USCIS"). Defendants redact exactly this kind of information anyway. *See, e.g.,* Sepe Decl.,
 2 Ex. D at p. 1. Defendants cannot withhold this highly relevant information by unilaterally
 3 claiming that the entirety of USCIS's internal decision-making processes in such cases is
 4 "inextricably linked" to third-party information.

5 Defendants' large, block redactions in the Named Plaintiffs' A-files also reinforce that
 6 Defendants have failed to follow this Court's Order, which instructs Defendants to use the law
 7 enforcement privilege "deliberately" and "to be exacting with which documents fall within this
 8 privilege." Dkt. 148 at 5. Defendants' redactions in the A-files are anything but deliberate and
 9 exacting. In multiple instances, Defendants withhold entire documents in the A-files. *See, e.g.,*
 10 Sepe Decl., Ex. E; Sepe Decl., Ex. F; Dkt. 326-1, Ex. C (email from counsel for Plaintiffs
 11 identifying to Defendants portions of A-files that were redacted in their entirety). And in other
 12 documents, Defendants redact blocks of information appearing within internal memoranda or
 13 communications. *See, e.g.,* Hyatt Decl., Ex. A at DEF-00420704, DEF-00420592, DEF-
 14 00420730.

15 Finally, Defendants fail to carry the "heavy burden" of showing why discovery is being
 16 denied. *See Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). Considering the
 17 numerous remaining redactions in the Named Plaintiffs' A-files—and how highly relevant
 18 information in the A-files is to Plaintiffs' claims—Plaintiffs would welcome *in camera* review of
 19 the Named Plaintiffs' A-files to determine whether Plaintiffs are entitled to additional
 20 information within the A-files.

21 III. CONCLUSION

22 Plaintiffs respectfully request that the Court order Defendants to produce
 23 USCIS-generated analysis on why the Named Plaintiffs' immigration benefits applications were
 24 subject to CARRP. These documents are important to Plaintiffs' claims. Alternatively, Plaintiffs
 25 request that the Court review the Named Plaintiffs' A-files *in camera* to determine the propriety
 26 of Defendants' redactions and whether further disclosure is warranted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date indicated below, I caused service of the foregoing document via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 24th day of January, 2020, at Washington, DC.

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